

EXHIBIT 10

STAR AUTO SALES, et al. v. VOYNOW, BAYARD, et al.
Hugh Whyte --- January 31, 2023

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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STAR AUTO SALES OF BAYSIDE, INC.
(d/b/a STAR TOYOTA OF BAYSIDE),
STAR AUTO SALES OF QUEENS, LLC
(d/b/a STAR SUBARU), STAR HYUNDAI
LLC (d/b/a STAR HYUNDAI), STAR
NISSAN, INC. (d/b/a STAR NISSAN),
METRO CHRYSLER PLYMOUTH INC. (d/b/a
STAR CHRYSLER JEEP DODGE) STAR AUTO
SALES OF QUEENS COUNTY LLC (d/b/a
STAR FIAT) and STAR AUTO SALES OF
QUEENS VILLAGE LLC (d/b/a STAR
MITSUBISHI),

Plaintiffs,

-against-

Case No.
18-cv-05775
(ERK) (TAM)

VOYNOW, BAYARD, WHYTE and COMPANY
LLP, HUGH WHYTE, and RANDALL
FRANZEN,

Defendants.

-----x
January 31, 2023
10:41 a.m.

Deposition of HUGH WHYTE, taken by
Plaintiffs, pursuant to Notice, held at the
offices of Milman Labuda PLLC, 3000 Marcus
Avenue, Suite 3W8, Lake Success, New York,
before Lisa Hiesiger, a Shorthand Reporter
and Notary Public within and for the State
of New York.

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2 | you can recall.

A. It was like engagement letters and some schedules, but I told her, I said --

5 MS. FITZGERALD: Okay, not just --

he's not entitled to know what you and I
talked about.

8 Q. Any other documents that you reviewed
9 other than some engagement letters?

10 A. There could be but I don't recall.

11 Q. What particular engagement letters
12 did you review?

13 A. Some of the ones from earlier in 2000
14 to later in 2000.

15 Q. Who were those engagement letters
16 between?

17 A. The Star entities and Voynow, Bayard.

18 Voynow.

Q. Were those engagement letters signed?

20 A. No.

21 Q. Are you aware of any signed
22 engagement letters related to the engagement
23 Voynow performed for any of the Star entities?

24 A. I'm not.

Q. Aside from preparing for the

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2 supervisor to a new client?

3 A. Generally probably between me and
4 Randy, we figure out who the best person is to
5 put as the in-charge. And it would generally
6 either be Bobby or Rob with some accountants with
7 them.

8 Q. Who decided which Voynow employee
9 would be the field supervisor for Star?

10 A. When Star originally wanted to get us
11 involved, we were referred through Reynolds and
12 Reynolds, and they really wanted somebody that
13 was fluent in Reynolds and Reynolds, and at the
14 time that was Randy, so Randy got the assignment.

15 Q. Why did Star want somebody that was
16 fluent in Reynolds and Reynolds?

17 A. Because they were trying to
18 streamline their accounting system and they
19 really didn't know what to do as far as setups
20 and things like that, and Randy had a very good
21 relationship with Reynolds, and if there was
22 things that they needed to do, then he could
23 direct them.

Q. During this period of time generally speaking at Voynow, how did Voynow convey to its

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2 Q. One of the items listed in this
3 advertisement is internal control design,
4 correct?

A. Yeah, if requested.

6 Q. All of the items on this
7 advertisement would be performed only
8 requested, correct?

A. That's correct.

10 Q. Tax preparation work would only be
11 performed if requested, correct?

12 A. Yes.

13 Q. Okay, you can hand that back to me,
14 please. With respect to internal control
15 engagement, what would Voynow charge for that
16 type of engagement?

A. I don't know.

18 Q. Going back over 20 years ago when you
19 actually went into the field, would there be any
20 meetings with the client other than the year-end
21 meeting in December?

22 A. Generally by request, yes, if they
23 requested it.

24 Q. So is it fair to say that these
25 quarterly meetings that you testified earlier --

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2 A. But I corrected that, I'm not sure
3 how many meetings, I'm not sure what we did.

4 Q. So you're only aware of one year-end
5 meeting?

6 MS. FITZGERALD: No, he said that
7 he's not aware of the other visits, he's
8 not aware how many or when, I believe is
9 what he said.

10 A. Yeah.

11 Q. So the only visit that you know about
12 with certainty is that there's a year-end visit
13 in December when it's a tax preparation
14 engagement, is that accurate?

15 A. It depends on the partner in charge,
16 they dictate that. Whether they're going to meet
17 with the client or they're just going to call the
18 client and walk through it on the phone with
19 them, it's up to the partner in charge, not me.

Q. Is it the norm for CPAs to have a written engagement letter for a tax engagement?

22 MS. FITZGERALD: Objection.

23 A. I don't think you can say it's the
24 norm, it's not required so a lot of people won't
25 even do them.

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2 MS. FITZGERALD: Wait a minute, do
3 you understand?

4 THE WITNESS: I don't understand.

5 MS. FITZGERALD: Don't answer if you
6 don't understand it.

7 THE WITNESS: I don't understand it.

MS. FITZGERALD: Can you rephrase it.

9 Q. Do you have any knowledge of a Voynow
10 manager having discussions with a dealer
11 principal about the benefit of having Voynow come
12 for an interim visit in July and August after a
13 tax return is filed?

14 A. I don't.

15 Q. Is there an added cost to a client
16 who decides to have additional interim visits?

17 A. Yes.

18 MS. FITZGERALD: Object to form.

19 Go ahead.

20 Q. So is it true that the only required
21 interim visit is in December?

A. Could be, could be.

23 Q. Do you know what the agreement was
24 between Star and Voynow as it relates to number
25 of interim visits that Voynow would pay each

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Q. Is that the only one you remember --

3 MS. FITZGERALD: Other than what he
4 testified to about Star.

5 A. And then you know obviously with
6 Springfield, everybody got canned.

7 Q. You can give me that back, we're not
8 going to use that one.

12 A. Like I told you, I don't go into the
13 field so there's no way I would know what's going
14 on with this stuff.

15 Q. Are you familiar with a cashier
16 audit?

A. I'm not, no.

18 Q. Are you aware of any -- of Voynow
19 performing a cashier audit for any of its
20 automobile clients?

21 A. Well, they'll check the petty cash
22 drawer and they'll do accounting of it, but I
23 don't know that that's an audit. There's no
24 outside verification of it and that's normally
25 what you need with an audit. They go to service

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2 and they'll do an account of the petty cash
3 drawer.

4 Q. What does that have to do with a tax
5 engagement?

6 A. It's usually a request from the
7 client that they want to make sure that whatever,
8 if there's any money being used out of that
9 drawer, and if there are, they want to shut it
10 down, they don't want that drawer being used for
11 buying lunches or anything like that. So that's
12 usually a request.

13 Q. So that would require a separate
14 engagement letter, correct?

15 A. Not necessarily. I mean sometimes
16 these requests are just de minimis and we do it
17 while we're there. It's not like you've got to
18 stop and raise the flag to the top of the
19 flagpole.

20 Q. Let's look at Exhibit 12. So this is
21 an e-mail that Randy sent to a bunch of Voynow
22 employees and you're copied on the e-mail. This
23 is from June 3rd, 2013, correct?

24 A. Yes.

Q. It's inquiring about the status of